THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.8677 of 2006

DATED: 11.12.2007

Between:

Union Bank of India, a Banking Company within the Banking Regulations Act, 1949 and one of the Nationalised Banks pursuant to the Banking Companies (Acquisition, Transfer of Undertaking) Act, 1970, having its Central Office at 239, Vidhan Bhavan Marg, Mumbai, rep. by its Deputy General Manager, Nodal Regional Office, Hyderabad, Mr C.Abraham.

.. Petitioner

And

The Controlling Authority under the Payment of Gratuity Act, 1970-cum-The Asst. Labour Commissioner (Central), Hyderabad and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.8677 of 2006

ORDER:

The short question that arises for consideration in this writ petition is whether the 1st respondent – Controlling Authority under the Payment of Gratuity Act, 1972-cum- the Assistant Labour Commissioner (Central), Hyderabad, could have entertained an application filed by the 2nd respondent – ex-employee under Section 7 of the Payment of Gratuity Act, 1972 (for short 'the Act')?

The facts are not much in dispute. Admittedly, the 2nd respondent, while working as Chief Manager, Terminal Benefits Section of the petitioner Bank at Bombay, was made to retire compulsorily with effect from 15.12.1999, as a measure of certain disciplinary proceedings initiated against him. Both appeal and review petition filed by the 2nd respondent were rejected. Thereafter, in the year 2005, he filed an application, under Section 7 of the Act, before the 1st respondent – Controlling Authority under the Act-cum-Assistant Labour Commissioner (Central), Hyderabad, seeking payment of gratuity. The said application was entertained and notices were issued to the General Manager (Personnel) and Chairman and Managing Director of the petitioner bank requiring their appearance

before the 1st respondent. Hence, the present writ petition is filed seeking a writ of Prohibition restraining the 1st respondent from proceeding with the application filed by the 2nd respondent.

It is the case of the petitioner bank that 2nd respondent retired compulsorily with effect from 15.12.1999 at Bombay and, thereafter, he filed an appeal and review before the appellate and review authority, both at Bombay, but the same were rejected. Nearly six years thereafter i.e. in the year 2005, he filed the application in question before 1st respondent at Hyderabad seeking payment of gratuity amount. According to the learned counsel for the petitioner, the very application filed by the 2nd respondent is not maintainable before the 1st respondent and the 1st respondent ought to have outrightly rejected the said application for want of jurisdiction. Instead of that, the 1st respondent entertained the application and sent notice to the petitioner herein, which is arbitrary and illegal. Learned counsel further contended that under Section 3 of the Act, the appropriate Government, may, by notification, appoint an officer to be a controlling authority, who shall be responsible for the administration of the Act, and different controlling authorities may be appointed for different areas. In this connection, learned counsel has drawn attention of the Court to S.O.430, whereunder a notification under Section 3 of the Act has been issued by the Central Government appointing the officers to be the controlling authorities for respective areas. At Sl.No.6 of the said S.O.430, the Assistant Labour Commissioners (Central), Bombay, Vasco-De-Gama and Pune were appointed as controlling authority for the States of Maharashtra and Goa, excluding certain civil districts mentioned therein; likewise, at Sl.No.12, the Assistant Labour

Commissioners (Central), Hyderabad, Visakhapatnam, Vijayawada and Mancherial, were appointed as controlling authority for the State of Andhra Pradesh and the area of Yanam in the Union Territory of Pondicherry. Learned counsel contended that since the 2nd respondent worked at Bombay and compulsorily retired from service while working there, the Assistant Labour Commissioners (Central), Bombay, Vasco-De-Gama and Pune are the competent authorities to try the application filed by the 2nd respondent, since they alone have got jurisdiction to try the cases pertaining to that areas, but not the Assistant Labour Commissioner (Central), Hyderabad. Therefore, the application filed by the 2nd respondent before the 1st respondent is not maintainable.

Per contra, learned counsel for the 2nd respondent strenuously contended that doctrine of cause of action cannot be invoked in a case of this nature, and the place of cause of action has no relevance for the purpose of entertaining an application, filed under the Act, by the controlling authority. The Act simply defines the employee, employer, controlling authority etc. May be the controlling authority's area is restricted, but, for the purpose of claim of an employee, the area is nowhere restricted under the Act. Therefore, the 2nd respondent is entitled to file an application, claiming payment of gratuity, before the 1st respondent. Further, though the 2nd respondent compulsorily retired from the service of the petitioner bank, while working at Bombay, as of now, he is residing at Hyderabad and since the petitioner bank has one of its branches at Hyderabad, it cannot be said that the controlling authority for the State of Andhra Pradesh has no jurisdiction to deal with the application filed by the 2nd respondent.

In this regard, learned counsel for the 2nd respondent relied upon a decision in **Jeewanlal Ltd. and others. v. Appellate Authority Under the Payment of Gratuity Act and others**[1], wherein, at paragraph 15, it was held as under:

> "……. It appears that Messrs Jeewanlal (1929) Ltd. have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras viz., Shree Ganeshar Aluminium Works and Messrs Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1300 workmen in its factories at Calcutta, Bombay and Madras. We are inclined to the view that the Controlling Authority had jurisdiction to entertain the claim of an employee working in an office attached to a factory as such an office would be an adjunct of the factory but that is not the question before us. The Controlling Authority has, in fact, confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question. That being so, the contention relating to jurisdiction of the Controlling Authority under Section 3 of the Act must fail."

Learned counsel for the 2nd respondent further relied on a decision in **Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others**[2] and contended that even the Controlling Authority at Hyderabad has jurisdiction to entertain the application of the 2nd respondent.

I have given my earnest consideration to the respective

submissions made by the learned counsel on either side and perused the material placed before the Court.

At the outset, I am of the opinion that the 1st respondent – Controlling Authority ought not to have entertained the application filed by the 2nd respondent, under Section 7 of the Act, as he is not the Controlling Authority for the area in Bombay. Under S.O.430, notification issued under Section 3 of the Act, the area, where the 2nd respondent has worked and retired from service, is earmarked to Assistant Labour Commissioners (Central), Bombay, Vasco-De-Gama and Pune, whereas the area of operation of the 1st respondent-Controlling Authority is in the State of Andhra Pradesh i.e. Hyderabad and he is not vested with the jurisdiction to deal with the matters arise in the area of operation of another Controlling Authority. Even, within one State, Controlling Authority of an area cannot exercise jurisdiction over another area, for which another Controlling Authority was appointed.

In this context, Section 3 of the Act may be relevant to be noticed hereunder:

> "**Controlling Authority**:- The appropriate Government, may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas."

Further, Sections 2 (d), 2 (e) and 2 (f) of the Act read as under:

> **2 (d) "controlling authority"** means an authority appointed by the appropriate Government under Section 3.
>
> **2 (e) "employee"** means any person (other than an apprentice) employed on wages, in any establishment,

factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

2 (f) **"employer"** means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-

(i) belonging to, or under the control of the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

S.O.430, notification issued under Section 3 of the Act, and the relevant Sl.Nos.6 and 12 therein, read as under:

"**S.O.430:-** In exercise of the powers conferred by Section (3) of the Payment of Gratuity Act, 1972 (39 of 1972), and in supersession of the Notification of the Government of India in the Ministry of Labour No.S.O.1394 dated the 22nd March, 1982, S.O.4751 dated the 13th December, 1984 and S.O.713 dated 24th February, 1987 the Central Government hereby appoints the officers mentioned in column (2) of the Schedule below to be the controlling authorities for the Area/Jurisdiction as specified in column (3) of the said schedule in relation to all establishments for which the Central Government is the appropriate Government under clause (a) of Section 2 of the said Acts."

Sl.No.	Officers	Area
1	2	3
6.	Assistant Labour Commissioners (Central), Bombay, Vasco-De-Gama and Pune.	(i) The State of Maharashtra excluding the following Civil Districts:- Nagpur, Bhandara, Akola, Amravati, Wardha, Buldhana, Jalgaon, Chandrapur, Gadchiroli, Nanded, Parbhani, Yeotmal, Osmanabad, Latur And Bid. (ii) State of Goa.
12.	Assistant Labour Commissioners (Central), Hyderabad, Visakhapatnam, Vijayawada and Mancherial.	The State of Andhra Pradesh and the area of Yanam in the Union Territory

of

Pondicherry.

A plain reading of the aforementioned provisions as well as S.O. would indicate that area/jurisdiction is defined insofar as the controlling authorities are concerned. While so, now the question is whether a controlling authority can entertain an application filed by an ex-employee, who worked within the jurisdiction of a different controlling authority as on the date of his retirement from service. I am of the view that it is not the cause of action that is more important. Though there is no prohibition for the Court to draw an inference or analogy as that of cause of action, the emphasis contemplated under the Act is area. Admittedly, the area, where the petitioner worked and retired, was Bombay and, therefore, the controlling authority, as per the notification issued under Section 3 of the Act, as noticed above, is the Assistant Labour Commissioners (Central), Bombay, Vasco-De-Gama and Pune, and they alone has jurisdiction to deal with the cases arising under the Act in that area. Thus, the 1st respondent cannot entertain the application filed by the 2nd respondent. Further, even if the analogy of theory of cause of action is drawn, it is very clear that neither the Controlling Authority at Hyderabad has been vested with the area/ jurisdiction to deal with such application nor any part of the cause of action arose at Hyderabad or in the area of the 1st respondent – Controlling Authority. Therefore, I am of the opinion that the application filed by the 2nd respondent, under Section 7 of the Act, is not maintainable before the 1st respondent.

For the above reasons, there shall be a writ of Prohibition

restraining the 1st respondent from entertaining the application filed by the 2nd respondent and proceeding further in the matter.

The writ petition is, accordingly, allowed. No costs.

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JUSTICE C.V. RAMULU

11th December, 2007.

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[1] (1984) 4 SCC 356

[2] (2007) 1 SCC 663